

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-1068

JAMES W. ALLEN, II
APPELLANT

V.

ALLEN HEATING & COOLING,
INC. and CAMBRIDGE
INTEGRATED SERVICES
APPELLEES

Opinion Delivered APRIL 8, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F608477]

AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, James W. Allen, II, appeals from the Workers' Compensation Commission's denial of benefits for permanent anatomical impairment for a back injury. We affirm.

Appellant sustained a compensable low-back injury on January 30, 2006. Appellant also alleged a neck injury, which was not accepted as compensable by appellees. Appellant received non-surgical treatment from several physicians, including Dr. Luke Knox. Appellant's MRI revealed a mild broad-based disc protrusion at one level of appellant's lumbar spine, according to the reviewing physician, Dr. Brown. Appellant's other diagnostic tests revealed degenerative changes and loss of disc height.

On February 19, 2007, appellant underwent an independent medical examination performed by Dr. Scott Schlesinger. In his report on the examination, Dr. Schlesinger stated that "[t]here is nothing to give him a disability rating for in regards to the lumbar spine." On

May 18, 2007, Dr. Knox assigned a five-percent impairment rating to appellant's lumbar spine due to appellant's back injury and a six-percent impairment rating to appellant's cervical spine due to the alleged neck injury.

Following a hearing, the Administrative Law Judge (ALJ) found, among other things, that appellant had sustained a compensable neck injury, and that appellant had sustained permanent impairment in the amount of eleven percent, encompassing both the low-back injury and the alleged neck injury. The Commission reversed the decision of the ALJ, finding that appellant had not sustained a compensable neck injury, which necessarily means that he is not entitled to permanent partial disability benefits for the alleged injury, and finding that appellant is not entitled to permanent partial disability benefits for his compensable low-back injury.¹

In reviewing a decision of the Workers' Compensation Commission, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirms those findings if they are supported by substantial evidence, which is evidence a reasonable person might accept as adequate to support a conclusion. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). This court will not reverse the Commission's decision unless it is convinced that fair-minded people with the same facts before them could not have reached the same conclusions reached by the Commission. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d

¹Appellant is not appealing the Commission's findings regarding the compensability of his alleged neck injury or his entitlement to permanent partial disability benefits for his alleged neck injury.

737 (2001). In a case such as this one, where the Commission denies benefits because a claimant failed to meet his or her burden of proof, we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

The sole point on appeal is whether there is substantial evidence to support the Commission's finding that appellant is not entitled to permanent partial disability benefits for his compensable low-back injury. The Commission is authorized to decide which portions of the medical evidence to credit and to translate this medical evidence into a finding of permanent impairment using the American Medical Association Guides to the Evaluation of Permanent Impairment. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.3d 823 (2003). The Commission may even assess its own impairment rating rather than rely solely upon its determination of the validity of ratings assigned by physicians. *Id.* Dr. Knox assigned a five-percent impairment rating, while Dr. Schlesinger indicated that there was no basis for an impairment rating. In finding that appellant was not entitled to permanent partial disability benefits as a result of his compensable injury, the Commission specifically stated that it assigned significant probative weight to Dr. Schlesinger's opinion. Appellant argues that the Commission gave no explanation as to why significant weight was assigned to Dr. Schlesinger's opinion, and that, in assigning significant weight to Dr. Schlesinger's opinion, it arbitrarily disregarded the opinions of appellee's other treating physicians.

In this case, we essentially have two physicians who are looking at the same MRI report and reaching two different conclusions. Dr. Knox looked at appellant's MRI and saw

a non-surgical lesion at one level of the lumbar spine, which led him to assign a five-percent rating pursuant to the AMA Guides. Dr. Schlesinger, on the other hand, looked at the same MRI and saw nothing upon which to base an impairment rating for the lumbar spine injury. The resolution of conflicts in the medical evidence is within the sole province of the Commission. *Strickland v. Primex Technologies*, 82 Ark. App. 570, 120 S.W.3d 166 (2003).

In this case, the Commission chose to give more weight to Dr. Schlesinger who, despite appellant's argument that he had not reviewed any of the medical records, specifically stated that he reviewed appellant's MRI before opining that the lumbar spine appeared "basically normal." Regarding appellant's claim that the Commission improperly disregarded the other medical evidence, we would point out that several of appellant's diagnostic exams did not indicate the presence of a disc lesion. Because the Commission is charged with interpreting the medical evidence and did so by choosing to credit Dr. Schlesinger's interpretation of the MRI, we hold that the decision of the Commission displays a substantial basis for the denial of relief.

Affirmed.

ROBBINS and BAKER, JJ., agree.